

the Division Chairman. The Chief, Waiver Review Division, or his or her designee may, at the Chairman's discretion, appear and present facts related to the case but shall not participate in Division deliberations.

(5) The Chairman of the Division shall be responsible for convening the Division and distributing all necessary information to its members. Upon being convened, the Division shall review the case file and weight the request against the program, policy, and foreign relations aspects of the case.

(6) The Bureau of Consular Affairs shall appoint, on a case-by-case basis, from among the attorneys in the Office of the Bureau of Consular Affairs, one attorney to serve as legal advisor to the Division.

(7) At the conclusion of its review of the case, the Division shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Division shall constitute the recommendation of the Division. Such recommendation shall be promptly transmitted by the Chairman to the Division Chief, Waiver Review Division.

(8) The recommendation of the Division in any case reviewed by it shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Commissioner by the Division Chief, Waiver Review Division.

[58 FR 15196, Mar. 19, 1993; 58 FR 18305, Apr. 8, 1993; 58 FR 48448, Sept. 16, 1993; 60 FR 16787, 16788, April 3, 1995; 60 FR 53125, Oct. 12, 1995; 62 FR 19222, Apr. 21, 1997; 62 FR 28803, May 28, 1997. Redesignated and amended at 64 FR 54539, 54540, Oct. 7, 1999]

## Subpart H—Transit Aliens

### §41.71 Transit aliens.

(a) *Transit aliens—general.* An alien is classifiable as a nonimmigrant transit alien under INA 101(a) (15) (C) if the consular officer is satisfied that the alien:

(1) Intends to pass in immediate and continuous transit through the United States;

(2) Is in possession of a common carrier ticket or other evidence of transportation arrangements to the alien's destination;

(3) Is in possession of sufficient funds to carry out the purpose of the transit journey, or has sufficient funds otherwise available for that purpose; and

(4) Has permission to enter some country other than the United States following the transit through the United States, unless the alien submits satisfactory evidence that such advance permission is not required.

(b) *Certain aliens in transit to United Nations.* An alien within the provisions of paragraph (3), (4), or (5) of section 11 of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District, may upon request or at the direction of the Secretary of State be issued a non-immigrant visa bearing the symbol C–2. If such a visa is issued, the recipient shall be subject to such restrictions on travel within the United States as may be provided in regulations prescribed by the Attorney General.

## Subpart I—Fiance(e)s and Other Nonimmigrants

### §41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) if:

(1) The consular officer is satisfied that the alien is qualified under that provision and the consular officer has received a petition filed by a U.S. citizen to confer nonimmigrant status as a fiancé(e) on the alien, which has been approved by the INS under INA 214(d), or a notification of such approval from that Service;

(2) The consular officer has received from the alien the alien's sworn statement of ability and intent to conclude a valid marriage with the petitioner within 90 days of arrival in the United States; and

(3) The alien has met all other qualifications in order to receive a non-immigrant visa, including the requirements of paragraph (d) of this section.

(b) Spouse. An alien is classifiable as a nonimmigrant spouse under INA